Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Revision of Part 22 of the	)	CC Docket No. 92-115
Commission's Rules Governing	)	
the Public Mobile Services	)	

COMMENTS

GTE Service Corporation on behalf of its affiliated domestic telephone operating, cellular, and air-ground companies

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SUMMARY

The FCC has proposed a broad re-write of Part 22 of its Rules. GTE supports streamlining government regulations and deleting or changing rules that are outmoded, redundant, no longer applicable, or otherwise not required. However, GTE is very concerned with changes that have a major substantive impact on current radio services and where the Commission has not articulated a reason for making the change. The changes may be merely inadvertent or the changes may be deliberate. If the Commission intends to make substantive changes, then the Administrative Procedure Act requires public notice of the reasons for the change.

For those changes where the FCC has provided its rationale, GTE generally supports the changes. Thus, GTE supports a "finder's preference" for those radio services where it makes sense to have such a preference. Knowing that such a preference exists, will help to minimize the warehousing of spectrum. GTE also supports a first-come, first-served licensing approach.

GTE urges the Commission to expand upon its settlement conference proposal and include more than just contested applications. Wherever the parties can find an amicable resolution of issues without burdening the Commission, the public interest is likely to be served.

While generally agreeing that traffic loading studies should not be required, GTE believes that applicant's for the Basic Exchange Telecommunications Radio Service ("BETRS") should be allowed to obtain the number of channels required to offer a quality grade of service.

GTE has offered specific comments on a number of the proposed definitions as well as on specific radio services. GTE urges the Commission to ensure that its final rules only accomplish the intended results, and do not impact

the Public Mobile Services in unintended ways. Modifying the Commission's proposal as suggested herein, is one way to accomplish that result.

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Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services	)	CC Docket No. 92-115

COMMENTS

GTE Service Corporation, on behalf of its affiliated domestic telephone operating, cellular, and air-ground companies ("GTE"), hereby submits its Comments in response to the Commission's Notice of Proposed Rulemaking ("Notice" or "NPRM") in the proceeding captioned above.[1]

I. INTRODUCTION

In this proceeding, the Commission is considering various changes to Part 22 of its Rules. Part 22 of the Commission's Rules contains the regulations and requirements governing common carrier public mobile services ("PMS") such as cellular and air-ground services. The Commission states in its Notice that it is proposing to revise Part 22 in order "to make [its] rules easier to understand, to eliminate outdated rules and unnecessary information collection requirements, to streamline licensing procedures and to allow licensees greater flexibility in providing service to the public."[2]

Through its various affiliates, GTE is a major provider of public mobile services. GTE Airfone Incorporated ("GTE Airfone") is a licensee in the 800

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1 FCC 92-205, released June 12, 1992.

2 Notice at ¶1.

MHz air-to-ground ("ATG") service. GTE Mobilnet Incorporated and Contel Cellular Inc. (collectively, "GTE Mobile Com") offer cellular service throughout the United States. Finally, the GTE Telephone Operating Companies ("the GTOCs") provide a variety of public mobile services to their customers, including paging, 450 MHz ATG service, basic exchange telecommunications radio service ("BETRS") as well as other rural radio service, and improved mobile telephone service ("IMTS"). Accordingly, GTE has a direct and vital interest in this proceeding.

In these Comments, GTE will present some general remarks regarding the Commission's proposal and then discuss specific rule sections of concern. As a general matter, GTE urges the Commission to proceed with caution in revising Part 22. While the goals of this proceeding are admirable, the Commission must work carefully in streamlining the rules to ensure that the rules as revised serve no more and no less than their intended purposes. In addition, certain of the Commission's proposed rules require minor modifications, as set forth below.

II. DISCUSSION

A. General Comments

GTE generally supports the streamlining of the FCC's rules and deletion of rule sections that are outmoded, redundant, no longer applicable, or otherwise not required. GTE also supports rule changes that "clarify" the intent of the current rule. However, GTE is very concerned about rule proposals that make "substantive" changes in the underlying radio services without any supporting rationale statement as to why a change is being considered or proposed. GTE and other parties are left to wonder whether some of the proposed substantive changes were deliberate or merely inadvertent. If changes are deliberate, then the Administrative Procedure Act ("APA")

requires that proper notice be given of the reason for the change. Including such proposals under the broad rubric of a "re-write" of the rules, does not comply with the APA. If such substantive changes were merely inadvertent, then the Commission should re-publish its proposal without such "inadvertent" changes.

For example, merely by changing some definitions, the Notice makes sweeping changes in the nature of what services can be offered over various radio facilities, yet there is no discussion of these issues in the NPRM. GTE assumes these changes are inadvertent, but has no way to definitively determine the FCC's intent. Given the scope of this proceeding, GTE recommends that the FCC confine this proceeding to only those substantive changes that have been explained in the Notice, and leave other substantive changes affecting particular radio services to a future NPRM -- directed to that radio service -- that adequately explains why the change is being proposed. Further, non-substantive changes that meet the stated intent to make the rules: (i) easier to understand, (ii) eliminate outdated rules and unnecessary information collection requirements, (iii) streamline licensing procedures, and (iv) allow licensees greater flexibility, could be adopted based on this Notice.

GTE supports the substantive proposal to allow a Finder's Preference for those Public Mobile Services where such a preference makes sense.

GTE generally supports the FCC's proposal to allow a "Finder's Preference" to "facilitate expeditious reassignment of channels to persons who will use them productively" (NPRM, ¶13) for those radio services where such a proposal makes practical sense. However, the Commission should make sure its final rules clarify that for services that are licensed on a nationwide basis, like the current 800 MHz Air-Ground Radiotelephone Service ("800 MHz ATG"); or services that are licensed on a large service area basis, like the current Domestic Public Cellular Radio Telecommunications Service, this preference would not apply to discrete channels or

frequencies that are not being used in a particular geographic location at a point in time, but still are part of the overall active system license and may be used in the future based on system changes, expansion, or frequency re-use shifts.

However, if an operator of cellular service were to cease providing service, its spectrum could be available for the finder's preference. Thus, a cellular provider who turns down its system could find its spectrum -- if it were not being used -- subject to the finder's preference.

GTE also supports the FCC's "first come, first served" procedure.

GTE also believes the FCC's "first come, first served" proposal to minimize the number of mutually exclusive applications in the PMS is in the public interest. Too often GTE has observed competitors filing applications during the current 60-day window merely as an attempt to impede competition. However, GTE also recognizes there may be legitimate proposals concerning system expansion offered by other parties which do not run the risk of delaying the licensing process or which are not merely anti-competitor filings. GTE will address its comments on such proposals in the Reply phase of this proceeding.

Settlement conferences should be used to resolve issues among various interested parties.

Numerous issues affecting small groups of interested parties could be negotiated by the use of settlement conferences as suggested in the proposed Section 22.135. As proposed, these conferences are limited to "contested application proceedings." This may be too limiting. There may be other matters that could be resolved by such a conference and the Commission should allow parties to request such a conference on other issues of mutual concern. For example, where an issue is a problem with a

current rule that affects only a small number of participants, this could also be handled by such a conference as a form of negotiated rulemaking.

However, the FCC could still go further. The Commission could also encourage the participants to negotiate a resolution of the issue without all the formality included under Section 22.135. Such a conference need not directly involve FCC staff if the parties agree. This would lower the administrative burden on the Commission and still allow for problem resolution. Many issues are resolved in industry fora today using just such an approach; however, there may not be an appropriate industry forum for all issues. If a resolution is determined without direct involvement or monitoring by the FCC, the final resolution document or outcome should still be presented to the FCC for its approval or acceptance -- whether this is in a contested matter or as part of negotiated rulemaking. This will allow the FCC to independently determine that the public interest is being served and not just the private interests of the participants.

GTE supports the deletion of the general requirement for traffic loading studies.

GTE supports the elimination of traffic loading studies. (NPRM, ¶16) These studies are expensive to perform and GTE believes that they are largely unnecessary. Entities will not expend funds to file applications for unneeded channels, and complete construction unless they are truly serious about operating the desired facility. Given the FCC's proposals for a finder's preference, if any spectrum is not being used, it will be discovered quickly. The finder's preference proposal plus the general rule of only authorizing two channels at a time, should minimize any risk of spectrum warehousing.

B. Comments on Subpart A - Scope and Authority

Section 22.99 (Definitions)

Section 22.99 provides the definitions of various key terms used in Part 22. In some cases the proposed definitions are very similar to current Part 22 definitions. In some cases the FCC has deleted current defined terms. The FCC has also changed the wording of some of the definitions and may not intend the results achieved. In addition to commenting on some of these proposals, GTE will offer key terms it believes need to be defined in the final rules.

Airborne Station

The term "Airborne Station" is defined in the proposed rule as: "A mobile station in the Air-Ground Radiotelephone Service authorized for use on aircraft in flight." This is similar to the current Part 22 definition, however, the current definition does not contain the limiting phrase "in flight." Current equipment can be used while the aircraft is on the ground, parked at a gate, or sitting on the tarmac. This new definition could be interpreted as making such on-the-ground use unauthorized since the substantive words of limitation "in flight" were added. This is an example of where GTE is uncertain whether the substantive change is inadvertent or deliberate.[3] There is no rationale stating why such aircraft equipment should only be used while "in flight." GTE urges that this phrase of limitation be deleted.

GTE also notes that the FCC uses the phrases "airborne mobile station," "airborne mobile transmitter," and "airborne mobile channels" in the proposed Subpart

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[3] In fact, for the 800 MHz ATG Service, the proposed rules specifically contemplate use of the service on the ground. (See Section 22.859) Thus, at a minimum, this conflict in the definition with the proposed rules, raises an ambiguity.

G rules. Since "airborne station" by definition includes the attribute of being "mobile," the FCC may wish to either delete the word "mobile" in the substantive rules, or change the defined term to be "airborne mobile station." Defining one term and then using different terms in the rules does not "clarify" the rules, it makes them ambiguous since a reader does not know whether the defined meaning is intended or some other meaning. Similarly, if the FCC chooses to maintain "airborne station" as the defined term, then "mobile" should be deleted from the language used to define "ground station" as a "transmitter that provides service to airborne mobile stations."[4]

Radiotelephone Services

The FCC has changed the names of various of the Part 22 Public Land Mobile Services from "Radio Telecommunications Services" to "Radiotelephone Services." If this were only a stylistic change, GTE would not be concerned. However, "Radio Telecommunications Service" and "Radiotelephone Service" have very different definitions in the FCC's NPRM. Radiotelephone Service is limited to "transmission of sound from one place to another by means of radio." In contrast, Radio Telecommunications Service includes radiotelephone service, radiotelegraph, and facsimile service. Thus, by changing the name of the service, the FCC seems to be placing substantive limits on how the spectrum can be used.

For example, cellular service today is defined as a "Radio Telecommunications Service." Under the new definitions, this would still allow sending a facsimile over a cellular channel, or the sending of a message from one place to another by means of radio (i.e., radiotelegraph service). However,

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[4] The FCC may also wish to drop the reference to "airborne" since this connotes use only while in flight. Use of a term like "Aircraft Station" may be more appropriate.

the FCC has changed the name of cellular to Cellular Radiotelephone Service (emphasis added). As a Radiotelephone Service, it appears that sending faxes and data would no longer be authorized if these definitions were adopted. This would clearly be a substantive change in the service for which no APA notice was provided.

Similarly, by defining the 800 MHz ATG Service as a "Radiotelephone Service," the FCC could be placing limits on sending of data and facsimiles in this service also. GTE urges the FCC to reconsider these changes and define the services consistent with today's permitted uses, or generate a Notice of Proposed Rulemaking to propose why the substantive rules should be narrowed.

Service to the Public

Since Section 22.142 of the Commission's proposed rules specifies that stations must begin providing "service to the public" no later than the date of required commencement of service or the authorization for the station terminates, a definition of what constitutes "service to the public" will eliminate any possible confusion about when service has commenced.

Since the FCC Form 489 is the vehicle used to inform the FCC that construction has been completed, it is important to note that actual service to the public cannot happen in some services until after the 489 has been mailed. For example, Section 22.873(a) states: "Service to the public may commence as soon as the [FCC Form 489] is mailed." Thus, it is clear that "service to the public" constitutes a system technically ready to serve a real customer, but possibly just short of having that customer connected since a customer cannot be offered service per Section 22.873 until after the form has been mailed, which is the legal benchmark for "commencement of service." Thus, GTE offers the following definition:

Service to the public. A Telecommunications Common Carrier shall be considered to be providing service to the public at a particular transmitter location when such Telecommunications Common Carrier's equipment at that location is capable of providing service as required by FCC rules and is available to provide service to customers, even if no actual customer is yet connected.

"Station" definition

Throughout the proposed rules, the term "station" is used in a variety of contexts. Often the context is in reference to a particular transmitter operating on a certain frequency. Other times, a station may encompass an entire system of equipment such as a cellular system that receives a single "station" license or authorization and call sign, yet numerous transmitters at various locations and frequencies are involved. In a service such as the 800 MHz ATG Service, a single radio "station" call sign is assigned to an entire nationwide network with all its ground "stations," transmitters, and airborne "stations." Thus, in varying different contexts the term "station" can have different meanings and different ramifications.

Congress has defined the following variations of "station":

1. Radio Station or Station
2. Mobile Station
3. Land Station
4. Amateur Station
5. Station License, Radio Station License, or License

In addition, Congress uses the term "station" to refer to non-spectrum based facilities, such as in the definition of "Telephone Toll Service" which "means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service." (See 47 U.S.C. Section 153)

In its proposed rules, the FCC has defined the following variations of "station":

1. Airborne Station
2. Ground Station
3. Mobile Station
4. Offshore Subscriber Station
5. Rural Subscriber Station
6. Temporary Fixed Station

"Authorization" is defined as the "written instrument issued by the Commission conveying authority to operate, for a specified term, a station in the Public Mobile Services." (emphasis added) Thus, in the 800 MHz ATG Service the entire nationwide system is "the station" since this is what is covered by the "authorization."

While the term "station" is used throughout the proposed rules, different meanings can attach. Section 22.101 refers to station files. Section 22.123(e)(3) Air-Ground Radiotelephone, sub-paragraphs (i), (ii) and (iii) use the same term "ground station." In one case a new authorization may be necessary for a new ground station, and in another case numerous ground stations are part of the initial system station license or authorization.

Since a station authorization may cover many transmitters, both fixed and mobile (e.g., cellular and 800 MHz ATG) it is not clear what the FCC intends by requiring that the "licensee of any station authorized in the Public Mobile Services must make the station and station records available to inspection by representatives of the Commission at any reasonable hour" (Section 22.301, emphasis added). If the "station" is an entire system, can the "station authorization" and "station records" be kept at one location? Or is the FCC

intending that some portion of "station" records be kept at each cell site or ground station?

GTE is unable to come up with a single "station" definition that might resolve these anomalies, but suggests that the FCC may wish to define the relevant use of "station" on a service-by-service basis and not try to have a general definition that is so broad across all Public Mobile Services that instead of "clarifying" the rules, the definition makes the situation worse.

C. Comments on Subpart B - Application Requirements and Procedures.

Section 22.105 (Written applications, standard forms, microfiche, magnetic disks.)

This section sets forth various administrative requirements regarding the filing of applications under Part 22. Of particular significance to GTE are the changes made in the microfiche requirements and in the standard forms to be used with applications.

GTE has three (3) suggestions regarding the Commission's rewrite of the microfiche requirements. First, the Commission should continue to exempt filings of five (5) pages or less in length from the microfiche requirement. The Commission's revised rule would exempt only filings and submissions that are three (3) pages or less from the fiche requirements, and would require standard application forms to be fiched regardless of length. GTE objects to the fiche requirement as revised because it would increase both the expense and amount of time required to prepare filings. As such, the fiche requirement as revised is unduly burdensome.

Second, Section 22.105 should be further modified to permit filers, under certain circumstances, to submit the paper original by the filing deadline and then submit the microfiche copies at a later date. Under Section 22.105,

microfiche is the required filing form; presumably, a submission consisting of just the paper original would be rejected as unacceptable for filing. While GTE can understand the Commission's desire for the simultaneous submission of microfiche copies and paper originals, the fact remains that it takes on the average at least three (3) business days to produce the fiche. As such, if the filing deadline is short, it is difficult for the filer to produce the fiche in a timely manner. As such, GTE believes it would be appropriate for the Commission to provide some flexibility in Section 22.105 for the filing of microfiche copies. For example, the Commission could specify that where the filing period is 15 days or less, the Commission would consider submission of the paper original on the due date as a timely filing, provided that the microfiche copies were submitted no later than three (3) days thereafter.

Finally, the Commission should clearly state in Section 22.105(d) which filings and submissions related to stations in the Public Mobile Services must be fiched and which must not. Despite the fact that the section as proposed would require all such documents to be fiched, it is not clear that is what is really intended. For example, GTE Airfone maintains a tariff for its 800 MHz ATG Service as required by the Commission. Amendments to this tariff are arguably "filings and submissions related to stations in the Public Mobile Services," yet it is GTE's understanding that the Tariff Division is not interested in receiving fiche copies of GTE Airfone's tariff. Thus, GTE recommends that the Commission in this section describe with greater specificity those filings and submissions that must be fiched, as well as examples of items not intended to be covered by this rule.

Regarding the application forms specified in Section 22.105(c) and Table B-1, GTE makes the following suggestions, which will improve the clarity and usefulness of the forms:

- On all the forms, the Commission should require applicants who submit exhibits to specify on each page of each exhibit the number of the exhibit, the number of the page, and the total number of pages of the exhibit (e.g., Exhibit 1, page 2 of 5). Such a requirement will make it easier for the Commission and the public to keep track of exhibits. Also, the Commission should put on each form a space in which the applicant must list and identify the exhibits attached. In this way, the Commission and the public can ascertain if the entire filing is in their possession.

- On FCC Form 401, the Commission should reinstate the question and check-off box for waivers requested. Such a box is useful in that it gives the reviewing public and the FCC staff a quick assessment of the complexity of the application and the need for careful review.

- The Commission should make more detailed and specific the instructions for FCC Form 401, Schedule B. For example, it is not clear what information is requested in the blank that follows "Date Filed" on page 1.

- On both FCC Forms 489 and 490, "Authorized Representative of Applicant" should be listed as an alternative for the identity of the individual signing the application.

- Item 6 on FCC Form 401, Instructions, refers to Section 22.6. There is no Section 22.6 in the proposed rules.

Section 22.115 (Content of applications.)

In Section 22.115, the FCC states that even though the Federal Aviation Administration ("FAA") will use geographic coordinates based on the 1983 North American Datum (NAD83), the FCC will continue to use geographical coordinates based on the 1927 North American Datum (NAD27). GTE urges the Commission to expedite the conversion to the NAD83 which is more accurate. As the Commission stated in its Public Notice, DA 88-316, released March 14, 1988:

> The Commission will eventually convert to use of NAD83 to maintain accuracy in our records and to maintain consistency with other government agencies and foreign administrations. The conversion to NAD83 will affect coordinates used to describe communication sites on authorizations, notifications, forms, rules, data bases, etc.

GTE urges the FCC to finish the transition as quickly as possible since maintaining two sets of references will lead to problems in application processing. The FCC might want to consider having the applications include both sets of coordinates on an interim basis until the FCC finishes its cutover to the new reference.

Section 22.123 (Classification of filings as major or minor.)

This section clarifies the existing Section 22.23 regarding the classification of filings as major or minor by explaining the rationale behind the classification. In the Notice, the Commission asks "whether there are circumstances under which a change in the location of a fixed transmitter or other changes to an existing fixed transmitter could properly be considered minor rather than major."[5]

GTE's comments on this section concern only the 800 MHz ATG Service. GTE believes that filings that affect only members of this industry should be classified as minor, whether or not a transmitter location or change in location is involved, if all "active" licensees consent to the matter proposed in the filing, if the applicant notifies all "inactive" licensees of its proposal, and the applicant certifies to such consent and notification in its filing. Such filings might include the following:

> (1) Modification of ground station channel block assignments, so long as such change would continue to meet the established co-channel separation requirement;
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> (2) Relocation of an existing ground station after coordination with the other licensees beyond the 1 mile requirement set forth in revised Section 22.859;

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[5] Notice at Appendix A, §22.123.

(3) Establishment of a new full-power ground station, so long as the co-channel separation requirements are met and other licensees are notified upon the commencement of operation; and

(4) Establishment of a new low-power ground station, so long as the co-channel separation requirements of both full-power and low-power ground stations are met and other licensees are notified upon the commencement of operation.

GTE proposes that these filings be classified as minor as long as the following conditions are met:

(1) The applicant must certify to the Commission that it has obtained, in writing, the consent of all active 800 MHz ATG Service licensees to the proposal contained in the filing. (A licensee would be considered "active" if it has advised the other licensees in the 800 MHz ATG Service that it has established or is in the process of establishing ground stations for its authorized service.)

(2) The applicant must certify that it has advised all inactive licensees of its proposal in writing at least 30 days prior to the filing of the FCC Form 489. All licensees not classified as "active" would be considered "inactive."

If the applicant can make these certifications, or at least certify that it has no evidence of objection, then the filing would be considered minor and processed as such. However, if the applicant cannot make the certifications, the application would be considered major and would require public notice and comment.

GTE believes that treatment of filings such as those listed above as minor where the applicant can demonstrate industry concurrence or lack of objection to its plan of action would serve the public interest. If the proposal set forth in an application affects only industry licensees and all such licensees either agree or fail to object to the proposal, there is little purpose to be served by placing the application on public notice. Treating the application as a minor application would conserve the scarce resources of the Commission and would allow the applicant to proceed to implement its proposal without unnecessary delays. Accordingly, GTE believes that it would be appropriate for the Commission to modify Section 22.123 as proposed.

Section 22.135 (Settlement conference.)

This section consists of a new rule that empowers the Commission to direct parties in any contested application proceeding to attend a settlement conference. As discussed in its General Comments, GTE strongly supports adoption of this rule. Such a rule should aid in the speedy resolution of application disputes. Permitting the settlement conference to be conducted via telephone conference call (Section 22.135(b)) is appropriate and should alleviate any chilling effect that potential travel expenses may have on persons desiring to file legitimate petitions. GTE also recommends that the FCC consider expanding the scope of this section beyond just contested applications as suggested by GTE.[6]

Section 22.143 (Construction prior to grant of application.)

This section sets forth the conditions under which applicants may construct their proposed facilities prior to the grant of their applications. Section 22.143(a) provides that applicants may begin construction 90 days after the date of the public notice listing the application as tentatively acceptable for filing. GTE sees no reason why the applicant must wait as long as 90 days to commence construction. The applicant should know within 35-45 days of the date of public notice whether any petitions to deny or mutually exclusive applications have been filed. Mutually exclusive applications would have to have been filed on the same day as the applicant's application. (NPRM, ¶19) All of the other conditions specified in Section 22.143(g) are within the control of the applicant. Thus, waiting an additional 45-55 days serves no valid purpose. Accordingly, GTE

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[6] In the 800 MHz ATG Service the FCC stated it encouraged "the licensees to discuss technical improvements before bringing such proposals to the Commission." (See 6 FCC Rcd 4582, ¶46)

recommends that the Commission modify Section 22.143(a) to permit pre-grant construction 35 days after the date of public notice as long as all of the conditions specified in the rule are satisfied.

Section 22.143(g) requires, as one condition to pre-grant construction, that the proposed facility, if not a cellular facility, not be located between Line A and the U.S.- Canada border.[7] The location of 800 MHz ATG facilities near the U.S.- Canada border is governed by the August 31, 1992 agreement with Canada regarding this frequency band ("the ATG Agreement").[8] Thus, this section should be revised to exempt 800 MHz ATG facilities as well as cellular stations under (g)(6) as long as the ATG Agreement is complied with.

Section 22.163 (Minor modifications to existing stations.)

This section sets forth the conditions under which licensees may make modifications to existing stations without prior Commission approval. Section 22.163(b) prohibits modifications without prior approval if the stations are located between Line A or Line C and the U.S.- Canada border. GTE disagrees with the broad brush approach of this subsection. In the case of cellular and 800 MHz ATG facilities, the mere location of the facilities should not be enough, in and of itself, to reclassify otherwise minor modifications as major. If the proposed modification is considered minor, then prior Commission approval should not be required. Licensees would still be required to coordinate such facility changes as required by any U.S. - Canadian agreements.

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[7] For the sake of clarity, GTE recommends that the Commission include a reference to Section 1.955, which defines Line A, in this and in all other sections which refer to the lines discussed in Section 1.955.

[8] GTE also recommends that the Commission list this agreement in Section 1.955.

Section 22.165 (Additional transmitters for existing systems.)

Section 22.165 describes the conditions under which licensees may operate additional transmitters at additional locations on the same channel or channel block as existing system without prior Commission approval.

Section 22.165(a) prohibits such operation if the additional transmitters are located between Line A or Line C and the U.S.- Canada border. GTE's concerns with this section are similar to its concerns with Section 22.163(b), i.e., the mere location of the station, in and of itself, should not warrant a prohibition on the addition of transmitters at a facility without prior Commission approval, as long as the additional transmitters have been coordinated and the addition complies with the ATG Agreement.

In addition, GTE notes that Section 22.165(f) effectively repeats the requirements of Section 22.859 and, thus, could be deleted.

Section 22.167 (Applications for assigned but unused channels.)

This section is a new section that establishes procedures for a finder's preference. GTE believes that this section should be clarified to provide that the finder's preference applies only to services such as paging, IMTS, and rural radio, and not to services such as cellular unless the total systems are turned down. The technical nature of cellular radio and 800 MHz ATG Service -- specifically, the employment of frequency reuse and multiple transmitters -- is such that a finder's preference in these services is inappropriate.